

James M. Casso (SBN 146423)
Matthew M. Gorman (SBN 214628)
CASSO & SPARKS, LLP
13200 Crossroads Pkwy. North, Suite 345
City of Industry, CA 91746
Phone: 626.269.2980 Office
E-Mail: jcasso@cassosparks.com

Attorneys for Defendant CITY OF
INDUSTRY, SUCCESSOR AGENCY
TO THE INDUSTRY URBAN-
DEVELOPMENT AGENCY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

SINCERE ORIENT COMMERCIAL
CORPORATION, a California
corporation,

Plaintiff,

vs.

CITY OF INDUSTRY, SUCCESSOR
AGENCY TO THE INDUSTRY
URBAN-DEVELOPMENT AGENCY,
a California unit of local government;
FOX LUGGAGE, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 2:17-cv-04755-PSG-RAO
Hon. Philip S. Gutierrez

**DEFENDANT CITY OF
INDUSTRY, SUCCESSOR
AGENCY TO THE INDUSTRY
URBAN-DEVELOPMENT
AGENCY'S NOTICE OF MOTION
AND MOTION TO DISMISS**

[FILED CONCURRENTLY WITH:

1. REQUEST FOR JUDICIAL
NOTICE;
2. DECLARATION OF JAMES M.
CASSO; AND
3. [PROPOSED] ORDER]

Date: January 22, 2018

Time: 1:30 p.m.

Place: Courtroom 6A

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN THAT, on January 22, 2018, at 1:30 p.m., or
as soon thereafter as this matter can be heard before the Honorable Philip S.

1 Gutierrez, in Courtroom 6A of the United States Courthouse for the Central District
2 of California, Western Division, 312 N. Spring Street, Los Angeles, California,
3 90012, Defendant SUCCESSOR AGENCY TO THE INDUSTRY URBAN-
4 DEVELOPMENT AGENCY (erroneously named as the “CITY OF INDUSTRY,
5 SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT
6 AGENCY”; hereafter referred-to alternatively as “**Defendant**” or the “**City**”) will,
7 and hereby does, move the Court pursuant to Rule 12(b)(6) and Rule 12(b)(7) of the
8 Federal Rules of Civil Procedure for an order dismissing all claims against it as
9 alleged in the First Amended Complaint filed by Plaintiff SINCERE ORIENT
10 COMMERCIAL CORPORATION (alternatively, “**Plaintiff**” or “**SOCC**”) in this
11 action, with prejudice.

12 This Motion is brought pursuant to Rules 12(b)(6), and 12(b)(7) of the Federal
13 Rules of Civil Procedure, on the ground that:

14 1. All claims of Plaintiff SINCERE ORIENT COMMERCIAL
15 CORPORATION (alternatively, “**Plaintiff**” or “**SOCC**”) fail to state a claim upon
16 which relief can be granted, as there is no such entity known as the “CITY OF
17 INDUSTRY, SUCCESSOR AGENCY TO THE INDUSTRY URBAN-
18 DEVELOPMENT AGENCY,” as alleged by Plaintiff, and the First Amended
19 Complaint fails to distinguish between the CITY OF INDUSTRY and the
20 SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT
21 AGENCY, which are separate and distinct government entities;

22 2. All claims of Plaintiff fail due to Plaintiff’s failure to join a party
23 (namely, THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE
24 INDUSTRY URBAN-DEVELOPMENT AGENCY) under Rule 19 of the Federal
25 Rules of Civil Procedure;

26 3. Plaintiff’s first cause of action against Defendant to “Enjoin or
27 Set Aside Unlawful Sale of Public Property” fails to state a claim upon which relief
28 can be granted;

1 4. Plaintiff's second cause of action against Defendant for fraud fails
2 to state a claim upon which relief can be granted and is barred against Defendant,
3 which is immune from liability pursuant to California Government Code Section
4 818.8;

5 5. Plaintiff's third cause of action against Defendant for violation of
6 RICO (18 U.S.C. § 1982(c) and 1964(a)) fails to state a claim upon which relief can
7 be granted and is barred against Defendant, which, as a government entity, is
8 incapable of forming the requisite malicious intent required to support RICO claims;

9 6. Plaintiff's fourth cause of action against Defendant for violation
10 of the Sherman Act and Clayton Act fails to state a claim upon which relief can be
11 granted and is barred against Defendant pursuant to the State Action Immunity
12 Doctrine and the Local Government Antitrust Act of 1984;

13 7. Plaintiff's fifth cause of action against Defendant for violation of
14 California Business & Professions Code Section 17200, *et seq.*, fails to state a claim
15 upon which relief can be granted and is barred against Defendant, which, as a
16 government entity, is not subject to claims under Business & Professions Code
17 Section 17200, *et seq.*;

18 8. Plaintiff's sixth cause of action against Defendant for violation of
19 the Cartwright Act fails to state a claim upon which relief can be granted and is barred
20 against Defendant, which, as a government entity, is not subject to claims under the
21 Cartwright Act; and

22 9. Plaintiff's seventh cause of action against Defendant for tortious
23 interference with contract fails to state a claim upon which relief can be granted and
24 is barred against Defendant, which is immune from liability pursuant to California
25 Government Code Section 818.8.

26 This Motion is made following the conferences of counsel pursuant to Local
27 Rule 7-3, which took place on November 8, 2017 and November 16, 2017, more than
28

1 seven days prior to the last day for filing the Motion.¹ Notwithstanding the foregoing
2 meet-and-confer efforts, the parties were unable to reach a resolution of the issues
3 raised in this Motion.

4 This Motion is based on this Notice of Motion and Motion, upon the
5 accompanying Memorandum of Points & Authorities, upon the Request for Judicial
6 Notice and accompanying materials filed concurrently herewith, upon the
7 Declaration of James M. Casso filed concurrently herewith, upon the pleadings and
8 papers filed in this action, and upon such further argument and matters as may be
9 offered at the time of the hearing on this Motion.

10 Respectfully submitted,

11 Dated: November 27, 2017

CASSO & SPARKS, LLP

12
13 By: */s/ James M. Casso*

14 JAMES M. CASSO
15 *Attorneys for Defendant* SUCCESSOR
16 AGENCY TO THE INDUSTRY
17 URBAN-DEVELOPMENT AGENCY
18 E-mail: jcasso@cassosparks.com
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24 ¹ Meet-and-confer efforts included telephonic and written communications by
25 counsel for the City with counsel for SOCC regarding the City's contentions
26 concerning SOCC's First Amended Complaint on several occasions prior to
27 November 8, 2017. Counsel for the City and SOCC met-and-conferred
28 telephonically on November 8 and 16, 2017, which included in depth discussion of
the facts and law to be raised by the City's Motion to Dismiss, and options for
resolution of perceived deficiencies in SOCC's First Amended Complaint.

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	2
LEGAL STANDARD.....	3
ARGUMENT	3
I. THE COMPLAINT IS INHERENTLY DEFECTIVE BECAUSE IT ERRONEOUSLY DEFINES THE “CITY”	3
II. SOCC’S FIRST CAUSE OF ACTION TO ENJOIN OR SET ASIDE UNLAWFUL SALE OF PUBLIC PROPERTY IS DEFECIENT	6
A. SOCC States No Statutory Or Other Basis For Its Claim That Sale Of The Subject Property To Fox Luggage Was Unlawful	6
B. Assuming SOCC Intended To Allege That The Sale Violated The Redevelopment Dissolution Act, Such Claim Is Not Valid.....	7
C. SOCC’s Allegations Conflict With The Requirements Of Section 34177(e) Of The California Health & Safety Code	10
III. SOCC’S CLAIMS SHOULD BE DISMISSED BECAUSE IT FAILS TO NAME THE OVERSIGHT BOARD AS A NECESSARY DEFENDANT	11
IV. THE SECOND CAUSE OF ACTION FOR FRAUD FAILS	12
A. The City Is Immune From SOCC’s Fraud Claim Under Section 818.8 Of The California Government Code.....	12
B. SOCC Fails To Plead Fraud With Particularity And Does Not Allege All Elements Required To Maintain This Cause Of Action	14
V. THE THIRD CAUSE OF ACTION FOR RICO VIOLATION SHOULD BE DISMISSED.....	16
A. RICO Causes Of Action Must Be Pleaded With Particularity	16
B. SOCC Cannot Maintain RICO Claims Against The City Because Public Agencies Lack Capacity To Form Malicious Intent	17
VI. THE FOURTH CAUSE OF ACTION UNDER THE SHERMAN ACT AND CLAYTON ACT SHOULD BE DISMISSED	18
A. The City Is Immune Under The State Action Immunity Doctrine	18
B. The Local Government Antitrust Act Of 1984 Applies Here.....	20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
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26
27
28

VII. THE FIFTH CAUSE OF ACTION UNDER THE CALIFORNIA
UNFAIR COMPETITION LAW SHOULD BE DISMISSED
BECAUSE PUBLIC ENTITIES ARE BEYOND THE SCOPE OF
THAT LAW 21

VIII. THE SIXTH CAUSE OF ACTION SHOULD BE DISMISSED
BECAUSE THE CITY IS A PUBLIC ENTITY NOT SUBJECT TO
LIABILITY UNDER THE CARTWRIGHT ACT..... 22

IX. THE SEVENTH CAUSE OF ACTION FOR TORTIOUS
INTERFERENCE WITH CONTRACT SHOULD BE DISMISSED
..... 23

CONCLUSION 25

TABLE OF AUTHORITIES

Federal Cases

<i>Ambrosia Coal & Const. Co. v. Pages Morales</i> 482 F.3d 1309 (11th Cir.2007).....	16
<i>Bell Atl. Corp. v. Twombly</i> 550 U.S. 544 (2007)	3
<i>Bly–Magee v. California</i> 236 F.3d 1014 (9th Cir. 2001).....	14
<i>Boone v. Redevelopment Agency of City of San Jose</i> 841 F.2d 886 (9th Cir. 1988).....	18, 20
<i>Borsellino v. Goldman Sachs Group, Inc.</i> 477 F.3d 502 (7th Cir. 2007).....	14
<i>Cervantes v. Countrywide Home Loans, Inc</i> 656 F.3d 1034 (9th Cir. 2011)	3
<i>City of Columbia v. Omni Outdoor Advertising, Inc.</i> 499 U.S. 365 (1991)	20
<i>Community Communications Co. v. City of Boulder</i> 455 U.S. 40 (1982)	18
<i>Cooper v. Pickett</i> 137 F.3d 616 (9th Cir. 1997).....	14
<i>County of Tuolumne v. Sonora Community Hosp.</i> 236 F.3d 1148 (9th Cir. 2001).....	22
<i>Daniel v. Am. Bd. of Emergency Med.</i> 988 F.Supp. 127 (W.D. N.Y. 1997)	21
<i>Desaigoudar v. Meyerecord</i> 223 F.3d 1020 (9th Cir. 2000).....	14
<i>Henson v. CSC Credit Services</i> 29 F.3d 280, 284 (7th Cir. 1994).....	3
<i>Horisons Unlimited v. Santa Cruz-Monterey-Merced Managed Medical Care Comm’n</i> 2014 WL 3342565 (E.D. Cal., July 2, 2014, No. 1:14-CV-00123-LJO-MJ).....	20
<i>In re Colonial Mortg. Bankers Corp.</i> 324 F.3d 12 (1st Cir. 2003)	3
<i>Jensen Enterprises, Inc. v. Oldcastle Precast Inc.</i> 2009 WL 440492, at *8 (N.D. Cal., Feb. 23, 2009, No. C 06-247 SI), aff’d (9th Cir. 2010) 375 Fed.Appx. 730.....	24

1	<i>Kearns v. Ford Motor Co.</i>	
2	567 F.3d 1120 (9th Cir. 2009).....	14
3	<i>Kern-Tulare Water Dist. v. City of Bakersfield</i>	
4	828 F.2d 514 (9th Cir. 1987).....	19
5	<i>Lancaster Community Hosp. v. Antelope Valley Hosp. Dist.</i>	
6	940 F.2d 397 (9th Cir. 1991).....	17
7	<i>Llewellyn v. Crothers</i>	
8	765 F.2d 769 (9th Cir. 1985).....	20
9	<i>Lopex v. Dean Witter Reynolds, Inc.</i>	
10	591 F.Supp. 581 (N.D. Cal. 1984)	
11	<i>aff'd</i> 805 F.2d 880 (9th Cir. 1986).....	16
12	<i>Mostowfi v. i2 Telecom Int'l, Inc.</i>	
13	269 F. App'x 621 (9th Cir. 2008).....	16
14	<i>O'Connor v. Uber Technologies, Inc.</i>	
15	2013 WL 6354534, at *13 (N.D. Cal., Dec. 5, 2013,	
16	No. C-13-3826 EMC).....	24
17	<i>Outdoor Media Group, Inc. v. City of Beaumont</i>	
18	(9th Cir. 2007) 506 F.3d 895.....	3
19	<i>Palm Springs Med. Clinic, Inc. v. Desert Hosp.</i>	
20	628 F.Supp. 454 (C.D. Cal. 1986).....	21
21	<i>Parker v. Brown</i>	
22	317 U.S. 341 (1943).....	18
23	<i>Piping Rock Partners, Inc. v. David Lerner Associates, Inc.</i>	
24	(N.D. Cal. 2013) 946 F.Supp.2d 957	
25	<i>aff'd</i> (9th Cir. 2015) 609 Fed.Appx. 497.....	23
26	<i>Schmidt v. Fleet Bank</i>	
27	1998 WL 47827, *5 (SDNY Feb. 4, 1998).....	16
28	<i>Schreiber Distributing Co. v. Serv-Well Furniture Co., Inc.</i>	
	806 F.2d 1393 (9th Cir. 1986).....	16
	<i>Sherwin-Williams Company v. Henry</i>	
	2014 WL 3909174, at *3 (N.D. Cal., Aug. 8, 2014,	
	No. C-14-02292 DMR).....	23
	<i>Skilstaf, Inc. v. CVS Caremark Corp.</i>	
	669 F.3d 1005.....	3
	<i>Swartz v. KPMG LLP</i>	
	476 F.3d 756 (9th Cir.2007).....	3
	<i>Thillens, Inc. v. Fryzel</i>	
	712 F.Supp. 1319 (N.D. Ill. 1989).....	20

1	<i>Town of Hallie v. City of Eau Claire</i>	
2	471 U.S. 34 (1985)	18
3	<i>TYR Sport, Inc. v. Warnaco Swimwear, Inc.</i>	
4	709 F. Supp. 2d 821 (C.D. Cal. 2010)	22
5	<i>United States ex rel. Karvelas v. Melrose-Wakefield Hosp.</i>	
6	360 F.3d 220 (1st Cir. 2004)	15
7	<i>Vess v. Ciba-Geigy Corp. USA</i>	
8	317 F.3d 1097 (9th Cir. 2003)	16
9	<i>Wool v. Tandem Computers Inc.</i>	
10	818 F.2d 1433 (9th Cir. 1987)	15
11	State Cases	
12	<i>Authority for California Cities Excess Liability v. City of Los Angeles</i>	
13	136 Cal.App.4th 1207 (Cal. Ct. App. 2006)	23
14	<i>Cal. Medical Ass'n, Inc. v. Regents of University of California</i>	
15	79 Cal.App.4th 542 (Cal. Ct. App. 2000)	21
16	<i>Cal. Redevelopment Ass'n v. Matosantos</i>	
17	53 Cal.4th 231 (Cal. 2011)	4
18	<i>City of Azusa v. Cohen</i>	
19	238 Cal.App.4th 619 (Cal. Ct. App. 2015)	8
20	<i>City of Burlingame v. San Mateo County</i>	
21	103 Cal.App.2d 885 (Cal. Ct. App. 1951)	5
22	<i>Cochran v. Herzog Engraving Co.</i>	
23	155 Cal.App.3d 405 (Cal. Ct. App. 1984)	12, 13
24	<i>Emeryville v. Cohen</i>	
25	233 Cal.App.4th 293 (Cal. Ct. App. 2015)	8
26	<i>Harshbarger v. City of Colton</i>	
27	197 Cal.App.3d 1335 (Cal. Ct. App. 1988)	12
28	<i>In re Sanitary Board of East Fruitvale Sanitary District</i>	
	158 Cal. 453 (Cal. 1910)	5
	<i>Lazar v. Superior Court</i>	
	12 Cal.4th 631 (Cal. 1996)	14
	<i>Pacific Architects Collaborative v. State of Cal.</i>	
	100 Cal.App.3d 110 (Cal. Ct. App. 1979)	13
	<i>Pacific Gas & Elec. Co. v. Bear Stearns & Co.</i>	
	50 Cal.3d 1118 (1990)	23

1	<i>Pacific States Enterprises, Inc. v. City of Coachella</i>	
2	13 Cal.App.4th 1414 (Cal. Ct. App. 1993)	5
3	<i>Penn v. City of San Diego</i>	
4	188 Cal.App.3d 636 (Cal. Ct. App. 1987)	22
5	<i>People ex rel. Freitas v. City and County of San Francisco</i>	
6	92 Cal.App.3d 913 (Cal. Ct. App. 1979)	22
7	<i>People for the Ethical Treatment of Animals, Inc. v. California Milk</i>	
8	<i>Producers Advisory Bd.</i>	
9	125 Cal.App.4th 871 (Cal. Ct. App. 2005)	22
10	<i>Universal By-Products, Inc. v. City of Modesto</i>	
11	43 Cal.App.3d 145 (Cal. Ct. App. 1974)	12, 13
12	<i>Widdows v. Koch</i>	
13	263 Cal.App.2d 228 (Cal. Ct. App. 1968).	22
14	<i>Wildlife Alive v. Chickering</i>	
15	18 Cal.3d 190 (Cal. 1976).....	11
16	<i>Younger v. Jensen</i>	
17	26 Cal.3d 397 (Cal. 1980)	22
18		
19	Federal Statutes	
20	15 U.S.C. § 34.....	20
21	15 U.S.C. § 34(1)(A)	20
22	15 U.S.C. § 34(1)(B).....	20
23	15 U.S.C. §§ 34-36	20
24		
25	State Statutes	
26	California Business & Professions Code § 16702.....	22
27	California Business & Professions Code § 16720.....	22
28	California Business & Professions Code § 16700.....	22
	California Business & Professions Code § 17200.....	21
	California Government Code § 815.2(b).....	13
	California Government Code § 818.4.....	13
	California Government Code § 818.8.....	12, 13, 23
	California Government Code § 820.2.....	13

1	California Government Code § 34101.....	4
2	California Health & Safety Code § 34170.....	4
3	California Health & Safety Code § 34171(h).....	8
4	California Health & Safety Code § 34171(j).....	5
5	California Health & Safety Code § 34171(k).....	5
6	California Health & Safety Code § 34172(b).....	4
7	California Health & Safety Code § 34173.....	4
8	California Health & Safety Code § 34173(a).....	5, 20
9	California Health & Safety Code § 34177(e).....	7, 8, 10, 11, 19
10	California Health & Safety Code § 34177(h).....	8
11	California Health & Safety Code § 34179 (a).....	8
12	California Health & Safety Code § 34179(h)(2).....	9
13	California Health & Safety Code § 34179 (i).....	8
14	California Health & Safety Code § 34180(g).....	8
15	California Health & Safety Code § 34181(f).....	9
16	California Health & Safety Code § 34191.5.....	8
17	California Health & Safety Code § 34191.5(b).....	8
18		
19	Rules	
20	Federal Rule of Civil Procedure Rule 9(b).....	14, 15, 16
21	Federal Rule of Civil Procedure Rule 12(b)(7).....	11
22		
23	State Constitutional Provisions	
24	California Constitution Article XI, § 2.....	4
25	California Constitution Article XI, § 3.....	4
26	California Constitution Article XI, § 5.....	4
27	California Constitution Article XI, § 6.....	4
28		

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Other Authorities

City of Industry City Charter Article I, § 1004

INTRODUCTION

SOCC's First Amended Complaint improperly seeks to hold a public entity liable for a host of claims which should never have been brought. Foundationally, SOCC has brought its case against a non-existent entity identified as the "CITY OF INDUSTRY, SUCCESSOR AGENCY TO THE URBAN-DEVELOPMENT AGENCY" – but no such entity exists. While there is a "City of Industry," and there is a "Successor Agency to the Industry Urban Development Agency," the two entities are separate public agencies and SOCC improperly conflates their identities. From even this most basic level, SOCC fails to raise valid claims.

This defect ripples throughout the Complaint, and is mirrored by the paradox that, while SOCC makes outlandish claims of an illicit scheme of bribery and kickbacks, not one natural person is identified in its Complaint and not one of the claims that it raises may properly be pinned onto a public entity. Further, in bringing its sensationalized claims against a public entity (albeit, a non-existent one), SOCC seeks to pin liability where it does not belong: on a government entity which is incapable of forming the malice and nefarious motive alleged by SOCC, rather than on the specific individuals who (allegedly) engaged in the corrupt practices that SOCC complains of.

If SOCC wishes to attack a public entity by claiming that it engaged in an unlawful conspiracy, it cannot hide behind inaccurate allegations and vague assertions which obscure the crux of who SOCC claims to have been corrupt and how the alleged corrupt acts occurred. Further, it cannot make its claims against an entity which does not exist, and it cannot make its claims without addressing the fact that the entities relevant to SOCC's allegations operate in the context of a highly complex and regulated body of law arising out of California's redevelopment dissolution. SOCC makes no mention of the fact that the alleged corrupt acts occurred in the context of overseeing agencies and other "checks-and-balances" which render its allegations highly implausible and, at the very least, incapable of

1 surviving even cursory judicial scrutiny. SOCC's claims fail on multiple levels, and
2 its First Amended Complaint should be dismissed.

3 **BACKGROUND²**

4 As alleged by SOCC, this action arises from a public bidding process
5 undertaken by the "City of Industry, Successor Agency to the Urban-Development
6 Agency" (the "**City**"),³ whereby the City's real property at 125 Orange Avenue in
7 the City of Industry (the "**Subject Property**") was sold to defendant Fox Luggage,
8 Inc. ("**Fox Luggage**"). SOCC alleges that, under California law, the City was
9 required to sell the Subject Property to the highest bidder [1AC ¶¶ 30-38], but the
10 City engaged in a "rigged bidding process" that was "influenced by graft [so that] it
11 would actually award the sale of the Subject Property to a pre-selected bidder," Fox
12 Luggage. [1AC ¶ 44.] SOCC alleges that "the City has been improperly influenced
13 in awarding the sale to Fox Luggage because of improper dealings, collusion and/or
14 anti-competitive agreements...." [1AC ¶ 32.]

15 SOCC alleges that it was the highest bidder for the Subject Property and the
16 City should have awarded the sale to it. [1AC ¶¶ 29, 49.] After a series of
17 communications to the City [1AC ¶¶ 31-36], SOCC filed the instant lawsuit stating
18 causes of action which challenge the City's sale of the Subject Property to Fox
19 Luggage under theories of "Unlawful Sale of Public Subject Property," fraud, RICO,
20 Sherman Act and Clayton Act violation, unfair competition, and tortious interference
21 with contract.

22 The City vigorously disputes SOCC's allegations and its claims which, as
23 explained herein, suffer from numerous deficiencies and should be dismissed.

24
25 ² The facts summarized here are taken from the allegations of SOCC's First Amended
26 Complaint, as required at this stage of the pleadings, and are vigorously disputed.

27 ³ SOCC's identification of the City throughout its First Amended Complaint is
28 improper. [See pages 3 through 6 of this brief, *ante*.] This brief uses SOCC's
reference to the "City" for the sake of consistency with SOCC's allegations only and
not as a concession that SOCC has properly identified any party.

LEGAL STANDARD

On a motion to dismiss, the Court must accept as true those factual allegations that the plaintiff has properly-pleaded and determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). While courts “generally consider only allegations contained in the pleadings,” they also consider “exhibits attached to the complaint, and matters properly subject to judicial notice.” *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir.2007); *Outdoor Media Group, Inc. v. City of Beaumont* (9th Cir. 2007) 506 F.3d 895, 899-900. A matter that is properly the subject of judicial notice may be considered along with the complaint when deciding a motion to dismiss for failure to state a claim. *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1016, fn. 9 (9th Cir. 2012); *In re Colonial Mortg. Bankers Corp.*, 324 F.3d 12, 16, 19 (1st Cir. 2003); *Henson v. CSC Credit Services*, 29 F.3d 280, 284 (7th Cir. 1994).

A court should grant a defendant’s motion to dismiss when “the complaint does not make out a cognizable legal theory or does not allege sufficient facts to support a cognizable legal theory.” *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011). “A complaint that alleges only ‘labels and conclusions’ or a ‘formulaic recitation of the elements of the cause of action’ will not survive dismissal.” *Id.* at 1041 (*quoting Twombly, supra*, 550 U.S. at 555).

ARGUMENT

I. THE COMPLAINT IS INHERENTLY DEFECTIVE BECAUSE IT ERRONEOUSLY DEFINES THE “CITY”

SOCC errs in naming the “City of Industry, Successor Agency to the Urban-Development Agency” as a defendant. [1AC ¶ 5.] There is no entity by this name, which is an improper hybridization of two separate and distinct entities:

1. The “CITY OF INDUSTRY” (the “**City of Industry**”) is a California municipal corporation organized as a charter city pursuant to the

1 California Constitution and enabling enactments. Cal. Const. art. XI, § 6; *see*
2 *also* Cal. Const. art. XI, §§ 2, 3, 5; Cal. Gov't Code § 34101; City of Industry
3 City Charter Art. I, § 100 [copy at Declaration of James M. Casso ("**Casso**
4 **Decl.**") Ex. A, p. 1 ("The City of Industry ... shall continue to be a municipal
5 corporation....")]; *see also* Request for Judicial Notice ("**RJN**") Fact 1.a.

6 2. In contrast, the "SUCCESSOR AGENCY TO THE INDUSTRY
7 URBAN-DEVELOPMENT AGENCY" (the "**Successor Agency**") is a
8 separate and distinct type of public entity known as a redevelopment
9 "successor agency" formed pursuant to the Redevelopment Dissolution Law
10 adopted by California's Legislature in 2011. *See* Cal. Cal. Health & Safety
11 Code § 34170, *et seq.* (the "**Redevelopment Dissolution Law**" [summarized
12 in *Cal. Redevelopment Ass'n v. Matosantos*, 53 Cal.4th 231 (Cal. 2011)]); *see*
13 *also* RJN Fact 1.b.; Casso Decl. ¶ 5 and Ex. B thereto. Under the Redevelopment
14 Dissolution Law, all redevelopment agencies in the State of California were
15 dissolved and, effective February 1, 2012, replaced by successor agencies,
16 which succeeded to the interests held by their respective former redevelopment
17 agencies. Cal. Health & Safety Code §§ 34172(b), 34173. The establishment
18 of successor agencies is codified at Section 34173 of the California Health &
19 Safety Code. The Successor Agency at-issue in this action is the successor to
20 the former INDUSTRY URBAN-DEVELOPMENT AGENCY ("**IUDA**"),
21 which was the redevelopment agency operating within the geographic area of
22 the City of Industry prior to dissolution. [RJN Fact 1.e.; Casso Decl. ¶ 4.]
23 Upon dissolution pursuant to the Redevelopment Dissolution Act, the IUDA
24 ceased to exist and was succeeded by the Successor Agency, which presently
25 acts pursuant to the strictures of the Redevelopment Dissolution Law. [RJN
26 Fact 1.e.; Casso Decl. ¶ 4.]

27 ///

28 ///

1 When they existed, redevelopment agencies (including the IUDA) were
2 recognized as distinct public entities existing as subdivisions of the State, separate
3 from cities, which are not State subdivisions, but municipal corporations. *See, e.g.,*
4 *Pacific States Enterprises, Inc. v. City of Coachella*, 13 Cal.App.4th 1414, 1424-1425
5 (Cal. Ct. App. 1993). Under the Redevelopment Dissolution Law, successor
6 agencies (including the Successor Agency here) are separate legal entities and not
7 part of any city. Cal. Health & Safety Code § 34173(a) (establishing “successor
8 agencies” as succeeding “to the former redevelopment agencies”); Cal. Health &
9 Safety Code § 34171(j), (k) (further defining “successor agencies” as an “entity
10 [succeeding] to the former redevelopment agency” and defining “cities” and other
11 entities separately as “taxing entities”); *see also City of Burlingame v. San Mateo*
12 *County*, 103 Cal.App.2d 885, 888 (Cal. Ct. App. 1951) (“there cannot be at the same
13 time, within the same territory, two distinct municipal corporations, exercising the
14 same powers, jurisdiction, and privileges’...”; *quoting In re Sanitary Board of East*
15 *Fruitvale Sanitary District*, 158 Cal. 453, 457 (Cal. 1910)).

16 By identifying the “City” as the “City of Industry, Successor Agency to the
17 Urban-Development Agency” [1AC ¶ 5], SOCC improperly conflates the differences
18 between the City of Industry and the Successor Agency, resulting in a foundationally
19 incorrect and improper complaint, as there is no such entity, confusing most of the
20 facts alleged by SOCC. [RJN Fact 1.d.; Casso Decl. ¶ 6.] For example:

21 • SOCC alleges that “[t]he City owned [the Subject Property]” [1AC ¶ 7],
22 but the City of Industry has never owned the Subject Property; rather, the Subject
23 Property was owned by the Successor Agency [RJN Fact 2.b.; Casso Decl. ¶ 8];

24 • SOCC alleges that “the City ratified the purchase agreement with a
25 memorandum (the “Memorandum”) referring to the Fox Luggage bid” [1AC ¶ 19],
26 but the City of Industry has had no involvement with such action and the alleged
27 “Memorandum” is an agenda for a meeting of the Successor Agency Governing
28 Board (not the City of Industry or its City Council), whereby the Successor Agency

1 (not the City of Industry) considered the Fox Luggage bid [1AC Ex. K; *see also* RJN
2 Fact 1.e. and Casso Decl. ¶ 12];

3 • SOCC alleges that “the City provided a fully executed purchase
4 agreement between the City and Fox Luggage for escrow of the Subject Property”
5 [1AC ¶ 22], and attaches a copy of the purported purchase agreement [1AC Ex. M];
6 but the City of Industry did not provide any purchase agreement and the attached
7 document is executed by the Successor Agency and Fox Luggage, not the City of
8 Industry.

9 Throughout its complaint, SOCC repeatedly alleges that “the City” committed
10 the various violations which comprise its causes of action in this case. But identifying
11 the “City” in this manner is improper, confusing, and erroneous, since there is no such
12 entity as defined in the complaint and it fails to distinguish or discern whether they are
13 against the City of Industry or the Successor Agency.

14 This Court may take judicial notice of the fact that the City of Industry is a
15 separate legal entity distinct from the Successor Agency. [RJN Fact 1.c.] As such, the
16 vast weight of SOCC’s complaint is improperly pleaded because it conflates those
17 two entities and fails to discern (and allege) their distinct status. Without proper
18 pleading, SOCC states no claim against the City of Industry or the Successor Agency,
19 and its complaint against the “City”⁴ should be dismissed.

20 **II. SOCC’S FIRST CAUSE OF ACTION TO ENJOIN OR SET ASIDE**
21 **UNLAWFUL SALE OF PUBLIC PROPERTY IS DEFECIENT**

22 **A. SOCC States No Statutory Or Other Basis For Its Claim That Sale**
23 **Of The Subject Property To Fox Luggage Was Unlawful**

24 SOCC’s first cause of action alleges that the City’s sale of the Subject Property
25 to Fox Luggage “is unlawful and in violation of California law, which requires that
26

27 ⁴ Because SOCC utilizes a divergent definition for the “City” in its complaint [1AC
28 ¶ 5, *et seq.*], that term is likewise used in this brief hereafter for the sake of
consistency with its use in SOCC’s complaint.

1 disposition of any real property owned by the City be in exchange for a clear, present
2 benefit that reflects fair market value.” [1AC ¶ 38.] In so alleging, SOCC fails to
3 state the provision of California law which purportedly requires sale at “fair market
4 value,” and ignores the fact (summarized below) that the Subject Property here was
5 **not** subject to any such requirement, but was instead subject to the sale requirements
6 provided in the Redevelopment Dissolution Law at California Health & Safety Code
7 Section 34177(e). [See pp. 10-11, *ante*.]

8 To state a claim that the “City’s” sale of the Subject Property was “in violation
9 of California law,” SOCC must, at a minimum, allege what California law was
10 violated. Its failure to do so renders its claim vague and implicates the due process
11 rights of the City of Industry and the Successor Agency, as they are forced to defend
12 against accusations and alleged violations of law which are unstated and unknown.
13 As such, SOCC’s first cause of action is fundamentally defective and should be
14 dismissed.

15 **B. Assuming SOCC Intended To Allege That The Sale Violated The**
16 **Redevelopment Dissolution Act, Such Claim Is Not Valid**

17 Although it accuses the “City” as having improperly sold the Subject Property
18 to Fox Luggage, SOCC ignores the fact that ***a successor agency does not have the***
19 ***final say over whether a sale of property should be made, or what the terms of a***
20 ***sale should be***. Rather, under the Redevelopment Dissolution Law, “oversight
21 boards” are established for each successor agency [Cal. Health & Safety Code §
22 34179], and a sale of property from the successor agency to any other party is subject
23 to oversight and approval by the successor agency’s oversight board. Cal. Health &
24 Safety Code § 34177(e).

25 Under the Redevelopment Dissolution Law, “[e]ach successor agency shall
26 have an oversight board composed of seven members,” which are appointed from
27 “the county board of supervisors,” the “mayor for the city that formed the
28 redevelopment agency,” the “largest special district ... in the territorial jurisdiction

1 of the former redevelopment agency,” the “county superintendent of education,” and
2 other authorities. Cal. Health & Safety Code § 34179(a). Such oversight boards have
3 several duties in overseeing the winding-down of the former redevelopment agencies
4 which they oversee, and owe a fiduciary duty in overseeing the assets, obligations
5 and activities of their respective successor agencies. *See, e.g., City of Azusa v. Cohen*,
6 238 Cal.App.4th 619, 623-624 (Cal. Ct. App. 2015) (*citing* Cal. Health & Safety
7 Code §§ 34177(h), 34179(a), (i), 34180(g), 34171(h); *Emeryville v. Cohen*, 233
8 Cal.App.4th 293, 298-299 (Cal. Ct. App. 2015)).

9 Among the duties that oversight boards are responsible for is the duty to approve
10 the sale of assets and properties of the successor agencies which they oversee. Cal.
11 Health & Safety Code § 34177(e) (permitting successor agency to “[d]ispose of assets
12 and properties of the former redevelopment agency” only “*as directed by the oversight*
13 *board.*”; emphasis added).

14 Further, under the Redevelopment Dissolution Law, property owned by a
15 successor agency is subject to long-range planning, and must be listed on the successor
16 agency’s long-range property management plan (“**LRPMP**”), which is established to
17 guide the use and disposition of former redevelopment agency properties. Cal. Health
18 & Safety Code § 34191.5. Each successor agency’s LRPMP is likewise submitted to,
19 and must be approved by, its respective oversight board, and is subsequently submitted
20 to the State Department of Finance (“**DOF**”) for final approval. Cal. Health & Safety
21 Code § 34191.5(b). As such, a complex and thorough hierarchy of oversight weighs
22 over successor agencies and seeks to ensure that assets and properties of the former
23 redevelopment agencies are properly managed and disposed in the winding-down of
24 those former agencies.

25 This statutory hierarchy applies to the Successor Agency here and was
26 implemented in the sale of the Subject Property to Fox Luggage:

27 1. The Successor Agency was formed pursuant to the Redevelopment
28 Dissolution Law and assumed ownership of the Subject Property from the former

1 Industry Urban Development Agency [RJN Fact 1.b.; Casso Decl. ¶¶ 4, 8];

2 2. The Successor Agency listed the Subject Property on its LRPMP,
3 which was approved both by its oversight board (the “**Oversight Board**”) and by DOF
4 [1AC ¶ 20 and Ex.’s E and L; *see also* RJN Facts 1.c. and 1.d.; Casso Decl. ¶¶ 9-11
5 and Ex.’s D, E, and F];

6 3. In proposing to sell the Subject Property to Fox Luggage, the
7 Successor Agency approved the sale at its public meeting, and submitted such approval
8 to the Oversight Board for consideration [1AC ¶ 19 and Ex. K; Casso Decl. ¶ 12];

9 4. The Oversight Board considered approval of the sale to Fox
10 Luggage and approved the sale at a noticed and open meeting [1AC ¶ 19 and Ex. K;
11 Casso Decl. ¶ 13 and Ex. G];

12 5. Notice of the approved sale was submitted to DOF (as per Cal.
13 Health & Safety Code §§ 34179(h)(2) and 34181(f), which did not object to the sale
14 [RJN Fact 2.g.; Casso Decl. ¶ 14];

15 6. The sale was consummated by execution of a purchase agreement
16 dated August 2, 2016 between the Successor Agency and Fox Luggage [1AC ¶ 21 and
17 Ex. M; RJN Fact 2.h.]; and

18 7. Title to the Subject Property was thereafter conveyed by the
19 Successor Agency to Fox Luggage’s designee, in conformance with an amendment to
20 the purchase agreement [RJN Facts 2.i. and 2.j.; Casso Decl. ¶¶ 15-16 and Ex.’s H, I].

21 Notably, SOCC *does* allege that “the Oversight Board of The Successor Agency
22 to the Industry Urban-Development Agency met and ratified the Successor Agency’s
23 resolution for sale of the Subject Property to Fox Luggage.” [1AC ¶ 20.] In so
24 alleging, SOCC refers to its Exhibit L, which is the agenda for the Oversight Board’s
25 August 2, 2016 meeting, item 5.5 of which was a Resolution whereby the Oversight
26 Board was “*approving and authorizing*” the sale of the Subject Property to Fox
27 Luggage.” [1AC Ex. L, p. 2 (emphasis added).] However, SOCC does not name the
28 Oversight Board as a defendant to this action, nor does SOCC state allegations to

1 overcome the fact that the Oversight Board – not the City or Successor Agency – was
2 the entity that gave ultimate approval for sale of the Subject Property to Fox Luggage.

3 SOCC must overcome the fact that the Oversight Board – not the City or
4 Successor Agency – was the entity that gave final approval for the sale. At the very
5 least, SOCC must allege why the City is responsible for the sale when, under both the
6 Redevelopment Dissolution Law and the facts alleged by SOCC (noted above), the act
7 of final approval was made by the Oversight Board.

8 C. SOCC's Allegations Conflict With The Requirements Of Section
9 34177(e) Of The California Health & Safety Code

10 To prevail on a claim that the City, Successor Agency, or Oversight Board's
11 approval of the sale violated California because the sale must "reflect[] fair market
12 value" [1AC at 9:7-8, 10-12], SOCC must also overcome the fact that the
13 Redevelopment Dissolution Law does *not* require that the sale of successor agency
14 properties be at "fair market value," to the "highest bidder," or for the "highest price."
15 Rather, the provision which governs the sale of successor agency property is Section
16 34177(e) of the California Health & Safety Code, which provides that successor
17 agencies shall, *inter alia*, "[d]ispose of assets and properties of the former
18 redevelopment agency *as directed by the oversight board*; ... in a manner aimed at
19 *maximizing value*." Cal. Health & Safety Code § 34177(e) (emphasis added).

20 By imposing a goal of "*maximizing value*," rather than "fair market value" or
21 "highest price," the Legislature intended that successor agency properties need not be
22 sold to the "highest bidder." Indeed, Section 34177(e) does not even mandate that
23 properties be sold at any given price; rather, the Section provides only that sales be
24 directed "*in a manner aimed*" at achieving a maximum value, evincing the
25 Legislature's intent for how the property disposition process should be overseen rather
26 than the actual sale price outcome of that process.

27 Canons of statutory construction require that meaning be given to the terms used
28 by the Legislature in its enactments, and that use of a given term in statute operates to

1 exclude the inference of others. *See, e.g., Wildlife Alive v. Chickering*, 18 Cal.3d 190,
2 195 (Cal. 1976) (“Under the familiar rule of construction, *expressio unius est exclusio*
3 *alterius*, where exceptions to a general rule are specified by statute, other exceptions
4 are not to be implied or presumed.”). Had the Legislature intended that successor
5 agency properties be sold at a “fair market price,” “maximum price,” or to the “highest
6 bidder,” such terms would have been incorporated into Section 34177(e) to provide
7 for this. The fact that the Legislature drafted Section 34177(e) to **exclude** such
8 verbiage evinces its intent that disposition of successor agency properties **not** be
9 subject to a “fair market value” or similar standard.

10 At the very least, SOCC has not alleged facts to address the standard for sale of
11 successor agency property under Section 34177(e), nor any other foundational facts to
12 overcome the standard under that Section, which does not require sale at a “fair market
13 value” or to a “highest bidder.” The lack of such allegations is fatal to SOCC’s cause
14 of action attacking sale of the Subject Property to Fox Luggage and warrants dismissal
15 of that claim.

16 **III. SOCC’S CLAIMS SHOULD BE DISMISSED BECAUSE IT FAILS TO**
17 **NAME THE OVERSIGHT BOARD AS A NECESSARY DEFENDANT**

18 As explained above, the Subject Property could not be sold except “as directed
19 by the oversight board.” Cal. Health & Safety Code § 34177(e). While SOCC alleges
20 that the Oversight Board “met and ratified the Successor Agency’s resolution for sale
21 of the Subject Property to Fox Luggage” [1AC ¶ 20], it does not state other
22 allegations about the Oversight Board, nor does SOCC name the Oversight Board as
23 a defendant.

24 Rule 12(b)(7) of the Federal Rules of Civil Procedure authorizes dismissal
25 where a party fails to join parties to an action where their joinder is necessary. Such
26 is the case as to the Oversight Board here, warranting dismissal.

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1 **IV. THE SECOND CAUSE OF ACTION FOR FRAUD FAILS**

2 **A. The City Is Immune From SOCC's Fraud Claim Under Section**
3 **818.8 Of The California Government Code**

4 SOCC's second cause of action is for fraud, and alleges that the City undertook
5 an unfair bidding process in determining a buyer for the Subject Property which
6 harmed SOCC by the cost it incurred in submitting a bid and depriving it "a fair
7 bidding process" whereby SOCC would have "obtain[ed] the Subject Property as the
8 rightful, winning bidder." [1AC ¶ 49.] This claim fails because the City is immune
9 from liability under Section 818.8 of the California Government Code.

10 Under California law, common law or judicially declared forms of liability for
11 public entities has been abolished, and government tort liability must be based on
12 statute. *Cochran v. Herzog Engraving Co.*, 155 Cal.App.3d 405, 409 (Cal. Ct. App.
13 1984). In particular, Section 818.8 of the California Government Code provides that
14 "[a] public entity is not liable for an injury caused by misrepresentation by an
15 employee of the public entity, whether or not such misrepresentation be negligent or
16 intentional." Cal. Gov't Code § 818.8. Section 818.8 has been interpreted in the
17 context of other public entity immunities, and in the context of alleged fraud. In such
18 contexts, California law is clear that public entities are immune from claims of fraud.
19 *Harshbarger v. City of Colton*, 197 Cal.App.3d 1335, 1340-1341 (Cal. Ct. App.
20 1988) ("A public employee may be liable for actual fraud, but the public entity is
21 wholly immune."); *Universal By-Products, Inc. v. City of Modesto*, 43 Cal.App.3d
22 145, 154 (Cal. Ct. App. 1974)).

23 In *Universal By-Products, Inc.*, the low-bidder on a city's competitive bidding
24 process brought a cause of action for fraud and other claims against the city for
25 rejecting all bids that were submitted. The court dismissed the fraud cause of action
26 based on the immunity provided under Government Code Section 818.8. *Universal*
27 *By-Products, Inc.*, 43 Cal.App.3d at 153-154. The court reasoned that Section 818.8
28 immunizes public entities from intentional misrepresentations of their employees,

1 and the alleged fraud (misrepresenting the legitimacy of the bidding process) fell
2 within this scope. *Id.* at 154. The court also noted that the city would likewise be
3 immune under other provisions, including those which cover exercises of discretion
4 [Cal. Gov't Code §§ 820.2, 815.2(b)], and issuance and denial of licenses [Cal. Gov't
5 Code § 818.4]. *Universal By-Products, Inc.* at 154-155.

6 Analogous facts are alleged by SOCC here, and warrant dismissal based on
7 Section 818.8: SOCC alleges that the City “impliedly represented to Plaintiff SOCC
8 (and to the public at large) that it would conduct a fair public bidding process” [1AC
9 ¶ 42], and that “the City and specific individuals acting under the City’s auspices ...
10 awarded the sale of the Subject Property to another bidder” due to the “personal greed
11 of the City official involved in the deception and fraud ... who gained personally
12 from gifts and other secret consideration paid to them to influence their decisions as
13 public officials” [1AC ¶¶ 43, 44]; but these allegations fall squarely within the scope
14 of Section 818.8 and *Universal By-Products, Inc.* See also *Pacific Architects*
15 *Collaborative v. State of Cal.*, 100 Cal.App.3d 110, 121 (Cal. Ct. App. 1979)
16 (“Insofar as the decision not to award the contract was based on the exercise of
17 discretion by the state employees, governmental immunity precludes the imposition
18 of any liability based on a tort theory.”). Even the damages sought by SOCC mirrors
19 that sought in *Universal By-Products, Inc.* [Cf *Universal By-Products, Inc.* at 150
20 and 1AC ¶ 49.]

21 As stated in *Cochran v. Herzog Engraving Co.*, *supra*, 155 Cal.App.3d at 409:
22 “[S]overeign immunity is the rule in California; governmental liability is limited to
23 exceptions specifically set forth by statute.” This principle applies to SOCC’s fraud
24 claim and warrants dismissal based on the City’s immunity under Section 818.8 of
25 the California Government Code.

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1 **B. SOCC Fails To Plead Fraud With Particularity And Does Not**
2 **Allege All Elements Required To Maintain This Cause Of Action**

3 Under California law, to state a claim for fraud a party must plead facts to
4 sufficiently allege five elements: (1) a misrepresentation; (2) the speaker's knowledge
5 of falsity; (3) the intent to defraud or induce reliance; (4) justifiable reliance; and (5)
6 resulting damage. *See, e.g., Lazar v. Superior Court*, 12 Cal.4th 631, 638 (Cal. 1996).
7 The pleading of such facts is subject to the heightened requirements of Federal Rule
8 of Civil Procedure 9(b) (“**Rule 9(b)**”), which provides: “In alleging fraud or mistake,
9 a party must state *with particularity* the circumstances constituting fraud or mistake.”
10 Fed.R.Civ.P. 9(b) (emphasis added); *Desaigoudar v. Meyerecord*, 223 F.3d 1020,
11 1022-1023 (9th Cir. 2000). Rule 9(b) requires that that the circumstances
12 constituting any alleged fraud must be pleaded “specific[ally] enough to give
13 defendants notice of the *particular misconduct* ... so that they can defend against the
14 charge and not just deny that they have done anything wrong.” *Kearns v. Ford Motor*
15 *Co.*, 567 F.3d 1120 (9th Cir. 2009) (citing *Bly–Magee v. California*, 236 F.3d 1014,
16 1019 (9th Cir. 2001)) (emphasis added).

17 To meet this standard, assertions of fraud *must* be “accompanied by the who,
18 what, when, where, and how of the misconduct alleged.” *Cooper v. Pickett*, 137 F.3d
19 616, 627 (9th Cir. 1997). This is required not just in making *claims* of fraud, but in
20 the *allegations* for fraud. *Borsellino v. Goldman Sachs Group, Inc.*, 477 F.3d 502,
21 507 (7th Cir. 2007).

22 The allegations by SOCC utterly fail to meet these standards. While SOCC
23 alleges that the City “impliedly represented to Plaintiff SOCC ... that it would
24 conduct a fair bidding process” [1AC ¶ 42], no particulars to substantiate this
25 allegation are alleged and the allegation, itself, is wholly general. SOCC goes on to
26 allege that “the City and the specific individuals acting under the City’s auspices,
27 influenced by graft and other dishonest motivations ..., awarded the sale of the
28 Subject Property to another bidder” [1AC ¶ 43], but these are conclusory allegations

1 that fail to state the “who, what, when, where, and how” of the alleged “graft and
2 other dishonest motivations.” Indeed, SOCC does not identify who at the City was
3 involved in the alleged graft, what its alleged improper subject was, who the other
4 “specific individuals” were, when these individuals engaged in alleged nefarious
5 conduct, and other particulars which are foundational to a plaintiff maintaining any
6 claim for fraud.

7 Similar failings are evident in all other paragraphs stated by SOCC to allege
8 fraud: SOCC alleges that the “City concealed from Plaintiff, the other bidders, and
9 the public at large, that it had rigged the bidding process” [1AC at 10:10-12], but the
10 identities of persons involved or even facts establishing “rigging” of the bidding
11 process are not alleged. SOCC states that the alleged scheme was “motivated by the
12 personal greed of the City officials involved in the deception and fraud” [1AC at
13 10:13-14], but fails to identify any City official. SOCC alleges that “gifts and other
14 secret consideration [were] paid to them,” but does not state who the alleged gifts
15 and consideration were paid to, who paid them, when they were paid, and other
16 particulars requires to satisfy the standard required by Rule 9(b).

17 If allegations of fraud are made on information and belief, a plaintiff must set
18 forth the source of the information and the facts that are the reasons for the belief.
19 *Wool v. Tandem Computers Inc.*, 818 F.2d 1433, 1439 (9th Cir. 1987); *United States*
20 *ex rel. Karvelas v. Melrose-Wakefield Hosp.*, 360 F.3d 220, 226 (1st Cir. 2004).
21 SOCC’s complaint fails to meet these requirements, pleading, for example, “[o]n
22 information and belief,” that “the City has been improperly influenced in awarding
23 the sale to Fox Luggage because of improper dealings, collusion and/or anti-
24 competitive agreements,” [1AC ¶ 32], while failing allege the source of the
25 information and the facts that are the reasons for this belief, as required to satisfy the
26 pleading mandate of Rule 9(b).

27 A plaintiff’s failure to meet the pleading standards required of Rule 9(b)
28 warrants dismissal of the complaint. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097,

1 1107-1108 (9th Cir. 2003). Because SOCC's fails to conform with Rule 9(b)'s
2 particularity requirement, its fraud cause of action should be dismissed.

3 **V. THE THIRD CAUSE OF ACTION FOR RICO VIOLATION SHOULD**
4 **BE DISMISSED**

5 **A. RICO Causes Of Action Must Be Plead With Particularity**

6 SOCC's third cause of action alleging violation of RICO is subject to the same
7 particularity requirements of Rule 9(b) noted above and, as such, should be dismissed
8 because it fails to meet Rule 9(b)'s standard. "Civil RICO claims, which are
9 essentially a certain breed of fraud claims, must be pled with an increased level of
10 specificity." *Ambrosia Coal & Const. Co. v. Pages Morales*, 482 F.3d 1309, 1316
11 (11th Cir.2007). To satisfy the Rule 9(b) standard, RICO complaints must allege: (1)
12 the precise statements, documents, or misrepresentations made; (2) the time and place
13 of and person responsible for the statement; (3) the content and manner in which the
14 statements misled the Plaintiffs; and (4) what the defendants gained by the alleged
15 fraud. *Id.* at 1316-1317. SOCC's complaint fails to plead these allegations with
16 particularity.

17 Indeed, Rule 9(b)'s particularity requirements have *even greater urgency* in
18 RICO claims. Many courts have required that the complaint "allege facts that specify
19 each defendant's connection to the alleged fraud" [*Schmidt v. Fleet Bank*, 1998 WL
20 47827, *5 (SDNY Feb. 4, 1998)], and have held that plaintiffs must plead RICO
21 predicate acts with particularity with respect to each and every alleged defendant.
22 *Schreiber Distributing Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393, 1400-
23 1401 (9th Cir. 1986); *Lopex v. Dean Witter Reynolds, Inc.*, 591 F.Supp. 581, 584
24 (N.D. Cal. 1984), *aff'd* 805 F.2d 880 (9th Cir. 1986). A plaintiff that bases its RICO
25 claim on a mail or wire fraud scheme must allege the time, place, content of, and
26 parties to the fraudulent communications, and must show that the plaintiff was
27 deceived by those communications. *Mostowfi v. i2 Telecom Int'l, Inc.*, 269 F. App'x
28 621, 624 (9th Cir. 2008).

1 Here, SOCC suffers from the same failure to meet Rule 9(b)'s standard as its
2 fraud allegations: each of SOCC's RICO allegations is exceedingly general and none
3 allege the "who, what, when, where, and how," and other particulars mandated by
4 Rule 9(b)'s particularity standard. [See 1AC ¶¶ 53-56.] As such, SOCC's third cause
5 of action under RICO is deficient and should be dismissed.

6 **B. SOCC Cannot Maintain RICO Claims Against The City Because**
7 **Public Agencies Lack Capacity To Form Malicious Intent**

8 The RICO claim must also be dismissed because it requires proof that the City
9 acted with malice and, as a public entity, the City is incapable of forming a malicious
10 intent, and is therefore not subject to RICO liability as a matter of law. This issue
11 was squarely addressed in *Lancaster Community Hosp. v. Antelope Valley Hosp.*
12 *Dist.*, 940 F.2d 397 (9th Cir. 1991), which concerned, *inter alia*, whether a plaintiff's
13 RICO claims could be maintained against public entity hospital districts. In
14 considering whether the districts could be subject to RICO claims, the Ninth Circuit
15 held that RICO claims must "fail because government entities are incapable of
16 forming a malicious intent," which is a predicate required for maintaining RICO
17 causes of action. *Id.* at 404.

18 It is beyond dispute that the City of Industry and the Successor Agency are
19 "government entities" to which the holding in *Lancaster Community Hosp.* applies.
20 [See pp. 3-5, *supra.*] Notwithstanding its erroneous naming of the City addressed
21 above [*Id.*], SOCC likewise alleges that the City is "a unit of local government that
22 is a body corporate and politic, and is a legal subdivision of the State of California."
23 [1AC ¶ 5.] As such, SOCC's RICO claim fails against the City as a matter of law
24 and should be dismissed.

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1 **VI. THE FOURTH CAUSE OF ACTION UNDER THE SHERMAN ACT**
2 **AND CLAYTON ACT SHOULD BE DISMISSED**

3 **A. The City Is Immune Under The State Action Immunity Doctrine**

4 In *Parker v. Brown*, 317 U.S. 341 (1943), the U.S. Supreme Court established
5 the State Action Immunity Doctrine, which provides that the Sherman Act does not
6 apply to actions of the states. *Id.* at 350-351. In *Community Communications Co. v.*
7 *City of Boulder*, 455 U.S. 40 (1982), the high Court extended the State Action
8 Immunity Doctrine (also known as “*Parker* immunity”) to municipalities, and
9 established that otherwise violative acts of a municipality are nevertheless shielded
10 from liability under the Sherman Act if the municipality acted under a “clearly
11 articulated and affirmatively expressed” state policy. *Id.* at 51-52. The Doctrine was
12 extended to redevelopment agencies in *Boone v. Redevelopment Agency of City of*
13 *San Jose*, 841 F.2d 886, 890-891 (9th Cir. 1988), and it follows that the Doctrine
14 applies to their successor agencies.

15 In applying the State Action Doctrine, courts apply a two-part test: “We must
16 first determine whether the California legislature authorized the challenged actions
17 of the city and the agency. Then we must determine whether the legislature intended
18 to displace competition with regulation.” *Id.* at 890. In applying this test to
19 redevelopment agencies, the Ninth Circuit in *Boone v. Redevelopment Agency of City*
20 *of San Jose* held that: (i) California’s Redevelopment Act clearly authorizes the types
21 of redevelopment activities that were challenged (including the enactment of
22 rehabilitation plans, zoning and regulatory exceptions, condemnation, *etc.*); and (ii)
23 while such activities may be inherently anticompetitive, the fact they are delegated
24 to redevelopment agencies by the Redevelopment Act “convinces us that the state
25 legislature ‘clearly articulated and affirmatively expressed’ a policy to permit anti-
26 competitive acts, and that the state legislature contemplated the kind of municipal
27 action about which the developer’s complaint.” *Id.* at 891 (*quoting Town of Hallie*
28 *v. City of Eau Claire*, 471 U.S. 34, 39, 44 (1985)).

1 This same reasoning applies to successor agencies here: successor agencies
2 are authorized by the Redevelopment Dissolution Law to liquidate their properties
3 and the Legislature clearly contemplated that such liquidation may be inherently anti-
4 competitive by imposing the standard under Section 34177(e) of the California
5 Health & Safety Code, described above. [See pp. 10-11, *supra*.]

6 Applying the State Action Doctrine in *Kern-Tulare Water Dist. v. City of*
7 *Bakersfield*, 828 F.2d 514, 518-519 (9th Cir. 1987), the Ninth Circuit noted that “[a]
8 city need not point to a specific, detailed legislative authorization before it may
9 properly assert a *Parker* defense to an antitrust suit,” and that “not every
10 anticompetitive effect of a statute need be articulated in order to satisfy the ‘clear
11 articulation’ requirement [Citations.] So long as the restraint is a ‘foreseeable result’
12 which results logically from a broad grant of regulatory authority to a city, the ‘clear
13 articulation’ requirement is satisfied. [Citation.]” *Id.* at 518-519 (citations omitted).
14 Applied here, the Redevelopment Dissolution Law need not articulate each possible
15 action which may be undertaken by a successor agency in order for State Action
16 Immunity to apply; rather, as long as the perceived anticompetitive action is a
17 “foreseeable result” of the implementation of the Redevelopment Act’s terms, State
18 Action Immunity must lie for that action. Such is exactly the situation here, as SOCC
19 alleges that the City sold the Subject Property to Fox Luggage, which was a
20 “foreseeable result” of the Act’s mandate to liquidate property under Section
21 34177(e) of the California Health & Safety Code.

22 The State Action Immunity Doctrine applies even in the context of “errors of
23 fact, law or judgment by a public agency” that are not otherwise authorized. *Kern-*
24 *Tulare Water Dist.* at 522. SOCC alleges that the City should have sold it the Subject
25 Property because it submitted the highest bid, but this is essentially an allegation that
26 the City erred in implementing its obligation to sell the Subject Property under the
27 Redevelopment Dissolution Law to which State Action Immunity applies. Even
28 allegations of graft and illicit purpose may not strip State Action Immunity, as noted

1 in dicta by the U.S. Supreme Court in *City of Columbia v. Omni Outdoor Advertising,*
2 *Inc.*, 499 U.S. 365, 378 (1991); *see also Boone, supra*, at 890; *Llewellyn v. Crothers,*
3 765 F.2d 769, 774 (9th Cir. 1985) (directors of state agency with authority to set fee
4 guidelines and maximum fee schedules do not lose State Action Immunity if they act
5 in bad faith); *Thillens, Inc. v. Fryzel*, 712 F.Supp. 1319, 1327 (N.D. Ill. 1989)
6 (immunity applies even if legislature that passed statute had been corrupted). These
7 authorities lie squarely on the allegations made by SOCC and, because they trigger
8 the State Action Immunity Doctrine, those claims fail against the City.

9 **B. The Local Government Antitrust Act of 1984 Applies Here**

10 The Local Government Antitrust Act of 1984 (“LGAA”) precludes the
11 recovery of damages, costs, or attorney's fees for Sherman Act or Clayton Act
12 violations from “any local government, or official or employee thereof acting in an
13 official capacity.” 15 U.S.C. §§ 34-36. Under the LGAA, a “local government” is
14 defined as “a city, county, parish, town, township, village, or any other general
15 function government unit established by State law” or “a school district, sanitary
16 district, or any other special function governmental unit established by State law in
17 one or more States.” 15 U.S.C. § 34.

18 Both the City of Industry and the Successor Agency to the Industry Urban-
19 Development Agency fall within the definition of a “local government” as defined in
20 the LGAA: aside from the fact that the City of Industry is (obviously) a “city,” the
21 Successor Agency is a unit of government established by the Redevelopment
22 Dissolution Act under Section 34173(a) of the California Health & Safety Code, and
23 constitutes either a “general function governmental unit” or a “special function
24 governmental unit,” both of which are deemed to be units of “local government” as
25 defined under the LGAA. 15 U.S.C. § 34(1)(A), (B).

26 In *Horisons Unlimited v. Santa Cruz-Monterey-Merced Managed Medical*
27 *Care Comm’n*, 2014 WL 3342565 (E.D. Cal., July 2, 2014, No. 1:14-CV-00123-
28 LJO-MJ), the court determined that a hospital district was a “special function

1 government unit” within the meaning of the LGAA, noting that “the ‘language and
2 legislative history of the LGAA is explicitly inclusive, not exclusive,” and that,
3 “[b]ecause Alliance was created and can be terminated by a county government
4 pursuant to a California statute, vested by state statute with all rights and immunities
5 vested in a county, and performs a localized public function of providing publicly
6 assisted healthcare services, Alliance is a ‘special function government unit’ within
7 the meaning of the LGAA.” *Id.* at *13 (quoting *Palm Springs Med. Clinic, Inc. v.*
8 *Desert Hosp.*, 628 F.Supp. 454, 457 (C.D. Cal. 1986); *Daniel v. Am. Bd. of*
9 *Emergency Med.*, 988 F.Supp. 127, 197 (W.D. N.Y. 1997)).

10 The Successor Agency likewise was created by statutes, vested with all rights
11 of a governmental entity and subdivision of the State of California, and must thus
12 also be deemed a “government unit” under the LGAA. [See also 1AC ¶ 5 (City is “a
13 unit of local government that is a body corporate and politic, and is a legal subdivision
14 of the State of California.”).] As such, the LGAA immunizes the City from liability
15 on SOCC’s Sherman Act and the Clayton Act claims.

16 **VII. THE FIFTH CAUSE OF ACTION UNDER THE CALIFORNIA**
17 **UNFAIR COMPETITION LAW SHOULD BE DISMISSED BECAUSE**
18 **PUBLIC ENTITIES ARE BEYOND THE SCOPE OF THAT LAW**

19 SOCC’s fifth causes of action alleges that the City violated California’s Unfair
20 Competition Law (California Business & Professions Code Section 17200, *et seq.*;
21 the “UCL”) because it allegedly engaged in a corrupt bidding process and responded
22 evasively to SOCC’s requests for information and documentation. [1AC ¶¶ 76-80.]
23 This argument ignores the fact that the UCL does not apply to public entities as a
24 matter of law. *Cal. Medical Ass’n, Inc. v. Regents of University of California* (2000)
25 79 Cal.App.4th 542.

26 Both the City of Industry and the Successor Agency are public entities. [See
27 pp. 3-5, *supra*; see also 1AC ¶ 5.] As such, the City is not subject to SOCC’s fifth
28 cause of action for violation of the UCL, as a matter of law. See also *People for the*

1 *Ethical Treatment of Animals, Inc. v. California Milk Producers Advisory Bd.*, 125
2 Cal.App.4th 871, 878-879 (Cal. Ct. App. 2005).

3 **VIII. THE SIXTH CAUSE OF ACTION SHOULD BE DISMISSED**
4 **BECAUSE THE CITY IS A PUBLIC ENTITY NOT SUBJECT TO**
5 **LIABILITY UNDER THE CARTWRIGHT ACT**

6 SOCC's sixth cause of action alleges that the City is liable under the
7 Cartwright Act. [1AC ¶¶ 85-90.] The Cartwright Act is codified at Section 16700,
8 *et seq.*, of the California Business & Professions Code and is the primary California
9 state antitrust law prohibiting anti-competitive activity, mirroring federal antitrust
10 laws the Sherman Antitrust Act and the Clayton Antitrust Act. *Younger v. Jensen*,
11 26 Cal.3d 397, 405 and fn 4 (Cal. 1980); *County of Tuolumne v. Sonora Community*
12 *Hosp.*, 236 F.3d 1148, 1160 (9th Cir. 2001).

13 The prohibitions imposed by the Cartwright Act apply only to "persons." Cal.
14 Bus. & Prof. Code § 16720. A "person" is defined to include corporations, firms,
15 partnerships and associations, but does **not** include municipalities and other political
16 subdivisions. Cal. Bus. & Prof. Code § 16702. Courts have therefore held that the
17 Cartwright Act does **not** apply to actions by government bodies. *Penn v. City of San*
18 *Diego*, 188 Cal.App.3d 636, 643 (1987); *People ex rel. Freitas v. City and County of*
19 *San Francisco*, 92 Cal.App.3d 913, 921 (1979); *Widdows v. Koch*, 263 Cal.App.2d
20 228, 235 (1968).

21 As noted above, the City here is a public entity and governmental body [see
22 pp. 3-5, *supra*], and SOCC alleges as much in its complaint. [1AC ¶ 5.] The City is
23 thus not liable for causes of action under the Cartwright Act.

24 "Where Cartwright Act claims are premised on the same facts as Sherman Act
25 claims, and summary judgment is granted on the Sherman Act claims, summary
26 judgment is also appropriate for Cartwright Act claims." *TYR Sport, Inc. v. Warnaco*
27 *Swimwear, Inc.*, 709 F. Supp. 2d 821, 838 (C.D. Cal. 2010). Here, SOCC's fourth
28 cause of action under the Sherman Act fails against the City as a matter of law, for

1 the reasons described above. It thus follows that SOCC's sixth cause of action under
2 the Cartwright Act must likewise fail on the same grounds.

3 **IX. THE SEVENTH CAUSE OF ACTION FOR TORTIOUS**
4 **INTERFERENCE WITH CONTRACT SHOULD BE DISMISSED**

5 SOCC's seventh cause of action⁵ for tortious interference with contract must
6 fail on grounds of immunity, and because such a claim requires a valid contract and
7 SOCC does not allege that any contract for its purchase of the Subject Property was
8 formed, nor the existence of any other contract to which the City interfered.

9 "The elements of a claim for tortious interference with contractual relations
10 are '1) *a valid contract between plaintiff and a third party*; 2) defendant's knowledge
11 of this contract; 3) defendant's intentional acts designed to induce a breach or
12 disruption of the contractual relationship; 4) actual breach or disruption of the
13 contractual relationship; and 5) resulting damage.'" *Sherwin-Williams Company v.*
14 *Henry* 2014 WL 3909174, at *3 (N.D. Cal., Aug. 8, 2014, No. C-14-02292 DMR)
15 (*quoting Pacific Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal.3d 1118, 1126 (1990)
16 (emphasis added)). As a tort claim, the City is immune under California Government
17 Code Section 818.8. [See pp. 12-13, *supra*.]

18 Further, SOCC does not allege that it formed a "valid contract" with the City
19 or with any other party for the purchase of the Subject Property or for any other
20 purpose. Without any valid agreement, SOCC has no basis to allege that the City
21 tortuously interfered with its contract, and its eighth cause of action must fail. *Piping*
22 *Rock Partners, Inc. v. David Lerner Associates, Inc.* (N.D. Cal. 2013) 946 F.Supp.2d
23 957, 980, *aff'd* (9th Cir. 2015) 609 Fed.Appx. 497 (claim for tortious interference
24 with contract which "offers no specific evidence that a contract exists, that the
25 contract was breached or disrupted, or that [plaintiff] suffered damages" must be
26 dismissed); *see also Authority for California Cities Excess Liability v. City of Los*
27 *Angeles*, 136 Cal.App.4th 1207, 1212 (Cal. Ct. App. 2006) (contract with city does

28 ⁵ Erroneously identified as its eighth cause of action. [See 1AC at 19:4.]

1 not exist unless it is in writing, approved by city council, and signed).

2 To the extent SOCC asserts that its tortious interference with contract claims
3 are valid because they arise from its Sherman Act claims, such argument should be
4 rejected in light of *Jensen Enterprises, Inc. v. Oldcastle Precast Inc.*, 2009 WL
5 440492, at *8 (N.D. Cal., Feb. 23, 2009, No. C 06-247 SI), aff'd (9th Cir. 2010) 375
6 Fed.Appx. 730. In *Jensen Enterprises, Inc.*, defendants argued that plaintiff's claim
7 for tortious interference with contract must be dismissed because plaintiff "had not
8 identified any contract of which defendants had knowledge or with which defendants
9 intended to interfere..." *Id.* at *8. Plaintiff argued that, because it raised antitrust
10 claims, "it can also maintain the tortious interference claims." *Id.* The Ninth Circuit
11 agreed that "plaintiff's tortious interference claims depend on its antitrust claims,"
12 but, "[s]ince the Court has determined that plaintiff cannot establish antitrust
13 violation or antitrust injury, plaintiff has not established the tortious or wrongful
14 conduct essential to a tortious interference claim." *Id.* This same reasoning applies
15 here, for SOCC's Sherman and Cartwright Act claims have no merit and, thus, cannot
16 support its claim of tortious interference with contract.

17 In *O'Connor v. Uber Technologies, Inc.*, 2013 WL 6354534, at *13 (N.D. Cal.,
18 Dec. 5, 2013, No. C-13-3826 EMC), the court considered, *inter alia*, whether Uber
19 drivers could maintain a cause of action for tortious interference with contract based
20 on an alleged interference with customer tipping. The drivers alleged that Uber
21 discourages customer tipping by advertising that tips are included in fares, thereby
22 interfering with drivers' contractual relations with customers and their prospective
23 tips. *Id.* at 13. The court disagreed, and held that the drivers "cannot meet the first
24 element of the tort because there can be no valid contract for the payment of voluntary
25 gratuities. An *illusory* agreement, in which no obligation is assumed by at least one
26 of the parties, is not an enforceable contract under California law." *Id.* at 14
27 (emphasis added).

28 A similar situation is alleged by SOCC, claiming to have some "contract rights

1 with respect to the purchase of the City's surplus Subject Property" [1AC at 19:16-
2 18], but not alleging that any actual contract had been entered into between it and the
3 City, and instead alleging merely that it had submitted a higher bid for purchase of
4 the Subject Property than Fox Luggage [1AC ¶¶ 27-29]. Having no contract with the
5 City, SOCC cannot satisfy the first element on a cause of action for tortious
6 interference with contract – and beyond this, as merely a bidder on a proposed sale
7 of the Subject Property, any alleged agreement between SOCC and the City was
8 *illusory*, since SOCC's alleged right to purchase the Subject Property was simply one
9 bid among several, with no obligation by the City to sell the Subject Property at all.
10 As with the Uber drivers claiming interference with an *illusory* agreement for
11 potential customer tips, SOCC claims interference with an *illusory* agreement for
12 purchase of the Subject Property which cannot form the basis of a claim for tortious
13 interference with contract.

14 CONCLUSION

15 For the foregoing reasons, the City respectfully requests that the Court
16 dismiss SOCC's complaint in its entirety and without leave to amend, or, in the
17 alternative, dismiss with leave to amend only as to those causes of action which the
18 Court finds the City may be subject to.

19 Dated: November 27, 2017

CASSO & SPARKS, LLP

21 By: /s/ James M. Casso

JAMES M. CASSO

Attorneys for Defendant SUCCESSOR

AGENCY TO THE INDUSTRY

URBAN-DEVELOPMENT AGENCY

E-mail: jcasso@cassosparks.com